

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In Re:

Lee Carter

Case No. 06-30352-DOT

Debtor.

Chapter 13

Capital One Auto Finance,

Plaintiff,

v.

Lee Carter

and

Carl M. Bates, Trustee,

Defendants.

MOTION FOR RELIEF FROM STAY AND NOTICE OF MOTION AND HEARING

NOW COMES Capital One Auto Finance, by counsel, and states as follows as its Motion for Relief from Stay against Debtor:

1. This Court has jurisdiction over the matters herein alleged pursuant to 28 U.S.C. § 1334.

This matter constitutes a core proceeding within the meaning of 28 U.S.C. § 157 and is a contested matter under Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

2. That on or about February 21, 2006, Debtor filed a Chapter 13 bankruptcy and Chapter 13 plan.

Sara A. John, VSB #48425
M. Richard Epps, P.C.
605 Lynnhaven Parkway
Virginia Beach, Virginia 23452
757-498-9600
Counsel for Plaintiff

3. That Plaintiff is a secured creditor of Debtor being secured by a lien on 2004 Nissan Xterra, VIN 5N1ED28T74C607288.

4. That under the terms of the plan, the Debtor proposed to pay Plaintiff post petition payments directly, outside of the plan.

5. Debtor is in default in the making of the post petition payments and is presently due post petition for the April 24, 2006 through January 26, 2007 payments for post petition arrearages totaling \$5,086.10 with a payoff of approximately \$21,556.79 on said account. Your Plaintiff has incurred costs and attorney's fees for this Motion. Your Plaintiff does not have evidence of insurance on the vehicle.

6. That Plaintiff lacks adequate protection.

7. For the above and foregoing reasons, Plaintiff asserts that cause exists sufficient to waive the requirement of Bankruptcy Rule 4001 (a)(3), therefore allowing the Order granting the relief sought to be effective upon its entry.

WHEREFORE, Plaintiff moves the Court for relief from the automatic stay pursuant to 11 U.S.C. § 362 so that it may proceed under state law.

Capital One Auto Finance

/s/ Sara A. John
Sara A. John
M. Richard Epps, P.C.

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Counsel for Plaintiff

NOTICE OF MOTION AND HEARING

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the Motion, then within fifteen (15) days from the date of service of this Motion, you must file a written response explaining your position with the Court at the following address: **Clerk of Court, United States Bankruptcy Court, 1100 East Main Street, Room 310, Richmond, VA 23219-3515**, and serve a copy on the movant's attorney at the address shown below. Unless a written response is filed and served within this fifteen day period, the Court may deem opposition waived, treat the Motion as conceded, and issue an Order granting the requested relief.

If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the expiration of the fifteen day period.

Attend a preliminary hearing scheduled to be held on March 14, 2007 at 11:00 AM in the Courtroom, Room 335, United States Bankruptcy Court, U.S. Courthouse Annex, 1100 East Main Street, Richmond, Virginia.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting relief.

Date: February 12, 2007

Signature, name, address and telephone
number of person giving notice:

/s/ Sara A. John
Sara A. John
M. Richard Epps, P.C.

605 Lynnhaven Parkway
Virginia Beach, Virginia 23452
757-498-9600
Virginia State Bar No. 48425
Counsel for Capital One Auto Finance

Certificate of Service

I hereby certify that on February 12, 2007, I mailed or electronically served a true copy of this Motion for Relief from Stay and Notice of Motion and Hearing to each party required to receive notice under Local Bankruptcy Rule 4001(a)-1(E)(1) as follows: Carl M. Bates, Trustee, P. O. Box 1819, Richmond, VA 23218; Joseph S. Massie, III, Counsel to Debtor, 116 N. 3rd Street, Suite 300, Richmond, VA, 23219; Lee Carter, 3220 Arthurwood Place, Richmond, VA 23223.

/s/ Sara A. John
Sara A. John
M. Richard Epps, P.C.